

REMARKS

The allowance of claims 9-46 is noted, with appreciation. The amendments made above cancel claims 2, 3, 7 and 8. Claims 1, 4, 5 and 6 had been canceled earlier. New claims 47-61 have been added. Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and the following arguments.

THE NEW CLAIMS

The newly added claims are directed to an impeller per se. Independent claim 47 is a reworded version of original claim 1, and more positively recites structural limitations that distinguish the impeller from those of the prior art of record. Dependent claims 48-61 correspond to original claims 2-11 and 16-19, respectively. Note that claims 55-61 are directed to the patentable two-piece impeller embodiment, and include the same limitations found in allowed claims 9-23.

PROSECUTION HISTORY TO DATE

There have been two Office Actions in this case. In response to the §102(b) rejection in the first Office Action, Applicant merely amended certain claims to place them in allowable form, and canceled claims that had been rejected, without addressing the merits of the rejection. In lieu of a notice of allowance, a second Office Action included a rejection of additional claims over newly cited prior art, also under §102(b). The merits of both rejections are addressed and traversed here in the context of new independent claim 47.

The first rejection (of original claims 1-3) is based on Cedrone (US 4,759,435), who discloses an apparatus for metering and singulating integrated circuits (ICs) moving in a queue along a flat feeding surface. A “spring wheel” comprises a hub that rotates about a horizontal axis above the feeding surface, and has 24 radially arranged coil springs with resilient tips. When a tip encounters an IC, its spring deflects rearwardly and then snaps back to propel the IC ahead of the queue. The anticipation rejection states, “Although Cedrone does not disclose that this impeller is for feeding paint balls, it includes all features claimed and could be used for this purpose with no structural change.” Office Action of February 25, 2004, at p. 2.

The second rejection (of claims 7, 2, 3 and 8) is based on Dalton (US 4,265,739), who discloses a froth flotation apparatus for agitating and aerating a liquid pulp mixture. The

apparatus has an elastomer impeller, which rotates submerged in the liquid adjacent a stator and comprises a hub and radially arranged L-shaped blades. The anticipation rejection states, “Although Dalton does not disclose that this impeller is used with a paintball loader, it includes all features claimed and could be used for this purpose with no structural change.” Office Action of July 23, 2004, at p. 2.

ARGUMENT

Newly presented claim 47 makes clear that the impeller of the invention does not comprise just any hub with resilient arms. Rather, “the impeller is *configured* for placement in an active feed paintball loader, ... the hub is *configured* to be mounted on and rotate with the shaft in the well [of the loader housing], and the arms are *sized* to fit within the well and are *spaced* to accommodate paintballs therebetween.” The highlighted words “configured,” “sized” and “spaced” have structural significance insofar as the impeller is concerned, and cannot be ignored.

Cedrone’s “spring wheel” for metering and singulating ICs cannot anticipate any claims because it does not meet all of the limitations of independent claim 47. Specifically, Cedrone’s spring wheel is not disclosed as (1) *configured* for placement in the well of a paintball loader; (2) *configured* to be mounted on and rotate with the shaft in the well of a paintball loader; (3) *sized* to fit within the well of a paintball loader; or (4) having arm *spacing* that would accommodate paintballs. Further, assuming the overall diameter of Cedrone’s spring wheel were properly sized to fit in the well of a paintball loader, it would appear that the multitude of arms would be too close together to accommodate paintballs.

Similarly, Dalton’s frothing impeller cannot anticipate any claims because it, too, does not meet all of the limitations of independent claim 47. Specifically, Dalton’s frothing impeller is not disclosed as (1) *configured* for placement in the well of a paintball loader; (2) *configured* to be mounted on and rotate with the shaft in the well of a paintball loader; (3) *sized* to fit within the well of a paintball loader; or (4) having arm *spacing* that would accommodate paintballs.

In view of the foregoing, it is respectfully submitted that all of the claims are now in condition for allowance. Favorable action is earnestly solicited.

INFORMATION DISCLOSURE STATEMENT

Filed concurrently herewith is an Information Disclosure Statement (IDS) citing, out of an abundance of caution, an article that is available on the "warpig.com" website. The article, by Bill Mills, reviews the eVLution 2™ paintball loader of Brass Eagle, the assignee of this application. That loader embodied the invention claimed herein. The article is not available as a reference against this application for the following reasons.

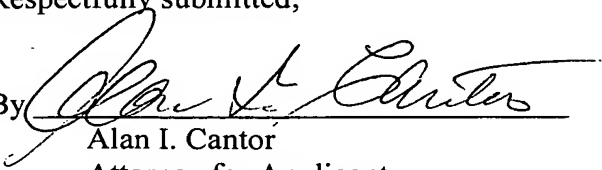
The date on the article is "August 2001," but Applicant is aware that the date is incorrect, and that the article could not have appeared in public that early because a prototype of the eVLution 2™ loader was first shown to Mr. Mills later, in October, 2001. In any event, even if the "August" date on the article were correct, the effective date of the article would be the last day of the month, i.e., August 31, 2001. That date is less than one year prior to the filing date of Applicant's priority application (No. 60/407,007, filed August 30, 2002), which fully supports the subject matter claimed herein. Accordingly, the article is not available as a reference under 35 U.S.C. §102(b).

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees that may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date NOV 23 2004
FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5300
Facsimile: (202) 672-5399

By 
Alan I. Cantor
Attorney for Applicant
Registration No. 28,163